SUPPORTING BRIEF.

The authority for issuing the writ upon this petition is given by Section 240 of the Judicial Code, 28 U. S. C. A. 347, 342 P. 359 and by Section 24 (c) of the Bankruptcy Act.

The writ should be issued because the United States Circuit Court of Appeals for the Tenth Circuit in holding that the court could not, after entry of the order of May 15, 1939 and while the proceeding was yet pending in the district court, lawfully make the order of February 23, 1940, re-asserting jurisdiction over the debtor's property. The order of May 15, 1939 was clearly erroneous. When this Court decided *John Hancock Mutual Life Insurance Company* v. *Bartels,* December 4, 1939 and *Kalb* v. *Feuerstein,* January 2, 1940 it, of course, became apparent to the district court that the order of May 15, 1939 was entirely out of line with the statute and the decisions of this Court and when, therefore, the matter first came before the court on February 23, 1940 the court made the order approving the report of the conciliation commissioner and staying proceedings as of August 31, 1937. The debtor may have petitioned the court to set aside the order of May 15, 1939 after the law was settled by this Court in the cases cited, and the Court would have the power to set aside the order and to stay proceedings.

Union Joint Stock Land Bank v. *Byerly,* 310 U. S. 1, 84 L. Ed. 1041;

Borchard v. *California Bank,* 310 U. S. 311, 84 L. Ed. 1222;

Wayne United Gas Co. v. *Owens-Illinois Glass Co.,* 300 U. S. 131, 81 L. Ed. 537;

In re Mahaffey, decided June 1942, 2d C. C. A., 120 F. 2d 292;

Mulligan v. *Federal Land Bank of Omaha,* 8th Cir., 129 F. 2d 438;

In re Windsor Square Development Co., 9th Cir., 91 F. 2d 493;

Webster v. *Barnes Banking Co.*, 10th Cir., 113 F. 2d 1003.

There is no reason why the Court could not, of its own motion, do what it could have done upon such an application. Furthermore, at the time the order of February 23, 1940 was made both the debtor and the Federal Land Bank were represented in court and were then presenting to the court an order to show cause which had theretofore been issued. No objection to the order was made. The question is presented as to whether an inferior court can, during the pendency of a proceeding in bankruptcy, correct its orders or judgments to conform to the judgments of this Court.

Wayne United Gas Company v. *Owens-Illinois Glass Co.*, 300 U. S. 131, 81 L. Ed. 537.

is authority for such an order. It has been held in other Circuit Courts that such authority exists. See cases cited.

This is not like the case of *Byerly* v. *Union Joint Stock Land Bank*, 310 U. S. 1, 84 L. Ed. 1041, because in that case an order of the state court confirming a sale was made after the dismissal of the proceeding because of the unconstitutionality of the first subsection (s) of Section 75 of the Bankruptcy Act, and before the reinstatement under the second subsection (s). In the case now before the Court, the order of February 23, 1940, staying proceedings against the debtor was entered before the right of redemption had expired and before the sheriff's deed issued on March 20, 1940.

Bernards v. *Johnson*, 86 L. Ed. 14, is not in point for the reason that by the minute entry dated February 23, 1940, the court, in effect, set aside the order of May 15, 1939 purporting to relinquish its jurisdiction over the property. The right of redemption had not expired on February 23, 1940

and consequently a deed had not been issued. The minute entry of February 23rd must be construed as it was by the Circuit Court of Appeals as setting aside the order of May 15, 1939, hence the sentence in *Bernards* v. *Johnson,* reading:

> "Since the District Court refused to review these orders and decree out of time, the petitioners could not attack them in the Circuit Court of Appeals."

It is not applicable for the court did not refuse to set aside its order even though out of time. The statement in *Wayne United Gas Company* v. *Owens-Illinois Glass Company* that:

> "the fact that such a court has no terms, and sits continuously, renders inapplicable the rules with respect to the want of power in a court of equity to vacate a decree after the term at which it was entered has ended."

and that therefore:

> "A Federal District Court has power to set aside its order dismissing a petition for reorganization of a corporation under Section 77 (b) of the Bankruptcy Act and to rehear the cause notwithstanding the period by the Act allowed for appeal from the order has expired." and

Bowman v. *Loperena,* 311 U. S. 262, 85 L. Ed. 177, are applicable and controlling in this case.

A Federal District Court after it has erroneously authorized the institution of a foreclosure proceeding in the state court against a debtor under subsection (s) of Section 75 of the Bankruptcy Act may make a proper order restraining such foreclosure before the right of redemption has expired. As in the *Wayne United Gas Company* the Federal Land Bank knew of the status of the proceeding in the Federal Court by actually participating in the same. See *Wright* v. *Union Central Life Insurance Company,* 304 U. S. 502, 82 L. Ed. 1490.

This is not different from the case where the original petition under Section 75 of the Act is filed before the expiration of the period of redemption, or the case of a dismissal of an original proceeding and a permissible refiling after the dismissal of the original proceeding and before the expiration of the period of redemption. In either case the right of redemption exists and it is protected by the statute which "subjects all of the farmer debtor's assets, specifically including rights of redemption, to the jurisdiction of the bankruptcy court".

Elizabeth Wright and Charles C. Wright v. *Gusta Logan, Harriet Sawyer and Exia Logan Reese,* 315 U. S. 139, 86 L. Ed. 443.

It must be borne in mind that the District Court did not, by the order of May 15, 1939 or by any other order, dismiss the proceedings. It continued jurisdiction over the debtor and other property, and by the correcting order of February 23, 1940 reasserted its jurisdiction. It was clearly the duty of the court to make such an order.

The holding of the Circuit Court of Appeals that:

> "The court could not divest itself of jurisdiction and exercise it at the same time or exercise it after a denial of it."

is out of harmony with all of the cases. The court, having erroneously denied its own jurisdiction, obviously could correct the error the same as it could correct any other error.

Respectfully submitted,

J. D. Skeen,
E. J. Skeen.